

Minutes
Air Pollution Control Board
Indiana Government Center South
Conference Room B
402 West Washington Street
Indianapolis, Indiana

April 12, 2001
1:02 p.m.

1. Mr. John Walker, Chairman, called the meeting to order. He noted that a quorum was present.

CALL TO ORDER
QUORUM

2. Chairman Walker introduced the board members.

INTRODUCTION OF
MEMBERS

Present: Mr. John Walker, Chairman
Mr. Marlow Harmon
Mr. Thomas Anderson
Mr. Chris Horn
Dr. Phil Stevens
Mr. David Benshoof
Mr. Randy Staley
Mr. John Bacone, Proxy, Department of Natural Resources (left early)
Ms. Melanie Darke, Proxy, Lieutenant Governor
Mr. Howard Cundiff, Proxy, State Board of Health

Also present were Ms. Rachel McGeever, Board Counsel; Mr. Timothy Method, Commissioner; Ms. Janet McCabe, Assistant Commissioner; and Ms. Kathy Watson, Branch Chief. Others are recorded on a separate sheet and made a part of this record. A court reporter was present and a transcript is available for review.

3. Mr. Method reported on the status of legislation that the air board might be interested in and the process the agency is going through to solicit input on agency priorities for the next two years. Three bills that the legislature is working on are relevant to the air board: House Bill 2147 includes provisions that affect the sunset legislation; Senate Bill 408 exempts the fugitive dust rule 326 IAC 6-4 from the sunset provisions and would preclude the air board from adopting a rule before July 2002 that either replaces or primarily concerns fugitive dust; and

REPORTS

Senate Bill 320, which deals with the lead-based paint accreditation program. Mr. Method also reported on IDEM's environmental performance agreement with EPA that provides federal grant money to the Air, Water, Hazardous Waste and Land programs. The environmental performance agreement is the mechanism used to lay out the agency's priorities, whether federally funded or not. IDEM has tentatively identified six overarching agency-wide priorities:

- "Build a Better IDEM" is a continuation of existing priorities. This is focused on internally improving IDEM's work force.
- Provide quality environmental services. This is focused on permits and compliance.
- Improve water quality.
- Innovations.
- Environmental Information.
- Reduce toxics.

Ms. McCabe reported on the OAQ's work with the public and EPA on resolving key issues on the NOx rule. IDEM is awaiting a formal response from EPA on those issues. She informed the board of the Indiana Register's publication of the preliminary adopted rule with a third comment period deadline of April 23, 2001.

4. Chairman Walker introduced the December 6, 2000 Air Pollution Control Board minutes.

MINUTES

Mr. Horn moved to adopt the December 6, 2000 Air Pollution Control Boards' Minutes. Mr. Staley seconded. The motion passed unanimously.

5. Mr. Walker introduced Nonrule Policy Document, AIR-027-NPD, Open Burning of Motor Vehicles for Firefighter Training, into the record of the hearing.

NONRULE POLICY DOCUMENT, Open Burning of Motor Vehicles for Firefighter Training

Ms. McCabe stated that the non-rule policy document exempts the fire department from the open burning law for motor vehicle firefighter training purposes. Language within the non-rule policy document very strongly encourages the removal of mercury switches within the vehicles before burning. She stated that the policy would be effective 30 days from the April 12, 2001 date.

Mr. Walker stated that no board action was required for the non-rule policy document.

Ms. Shokrina Radpour Beering, representing the Indiana Volunteer Firemen's Association, expressed support of the non-rule policy document.

Mr. Walker announced that the board would address rulemakings in a slightly different order than that listed on the agenda. Item three, preliminary adoption of amendments to rule 326 IAC 2-6, concerning emission reporting, would be addressed before item two, preliminary adoption of new rule 326 IAC 6-4.5 and repeal of rule 326 IAC 6-4 concerning fugitive dust.

6. Chairman Walker introduced Exhibit 1, the draft rule, amendments to rule 326 IAC 6-3, process weight rates, into the record of the hearing.

**PUBLIC HEARING FOR
PRELIMINARY
ADOPTION OF
AMENDMENTS TO
RULE 326 IAC 6-3,
Process Weight Rates**

Ms. McCabe stated that the process weight rate rule is a generic backstop rule for particulate matter emissions when there is not a targeted specific rule for a specific process.

She stated the importance of the rule for controlling particulate matter from a variety of miscellaneous operations, some which are relatively small and some of which are not small. Ms. McCabe stated that this rule is part of the state implementation plan and is subject to the sunset law. Ms. McCabe urged the board to preliminarily adopt the rule.

Mr. Kurt Anderson, Director of Environmental Health and Safety for Monaco Coach Corporation, believes that the *de minimus* level being established in the rule is too low. He requested: that 326 IAC 6-3-2(d) be modified to remove any reference to accumulations on the ground and be less strict as a visible emissions requirement; that the phrase "accumulation on the ground" be taken out of the standard requirements; that exemptions or work practices be written for certain types of operations such as welding, minor welding (that's less than one ton of rod or wire per day), torch-cutting activities, and paint preparation (including bodywork activities); that *de minimus* limits and basic work practices would help make the rule better; that a clearer definition of "operations" is needed; and that all insignificant activities that are listed in the current Title V rule be incorporated in the rule.

Mr. Jim Hauck, Barnes and Thornburg, endorsed comments to be made by IMA and other industries attending the meeting.

Mr. Al McMahon, attorney for General Electric Company, stated that General Electric Company is a member of IMA. General Electric Company believes that they can work out any issues on this rule with IDEM over the next few months. General Electric Company had no objection to the preliminary adoption of the rule.

Mr. Vincent Griffin, State Chamber, believes that if the rule is preliminarily adopted, that they can work with IDEM toward a reasonable conclusion.

Mr. Anderson moved to preliminarily adopt amendments to rules 326 IAC 6-3. Mr. Harmon seconded. The motion passed unanimously.

7. Chairman Walker introduced Exhibit 3, the draft rule, amendments to rule 326 IAC 2-6, emission reporting, into the record of the hearing.

**PUBLIC HEARING FOR
PRELIMINARY
ADOPTION OF
AMENDMENTS TO
RULE 326 IAC 2-6,
Emission Reporting**

Ms. Watson stated that the rule had been in place since 1993. The rule is part of IDEM's state implementation plan and was required by EPA for ozone planning purposes. However, the rule goes beyond the ozone planning purposes and includes reporting of other criteria pollutants. This information is used both for planning and for permit modeling for new sources. It has also been used for Title V fee billing since the beginning of the Title V program. The current rule requires major sources statewide to report criteria pollutants to the department, and sources in ozone nonattainment areas or maintenance areas to report criteria pollutants if their VOC or NOx emissions exceed ten tons per year. More sources must report in nonattainment or maintenance areas because of the ozone planning purposes of the rule.

This rulemaking began in 1997 to add clarity to the rule, improve consistency with other rules, incorporate proposed changes in EPA's consolidated emission reporting rules, and to consider inclusion of hazardous air pollutant reporting. IDEM is also requesting all FESOP sources to report emissions. This rule is subject to sunset. IDEM has held a number of public meetings and identified the issues and is willing to devote the resources to resolve them prior to final adoption.

Mr. Mike Brooks, Chief of the Air Program Planning and Policy Section in the Office of Air Quality, discussed in detail the following changes to the rule: administrative changes being proposed; proposed changes to require reporting of emissions by sources that have a FESOP; the requirement of hazardous air pollutant emission reporting by major sources; and a discussion of the draft language included relative to providing authority to request additional emissions-related information from sources that would be in areas or centers of concern.

Bernie Paul, Eli Lilly Corporation, also speaking on behalf of the Indiana Manufacturers Association, expressed significant concerns regarding the technical and policy aspects of the draft rule and asked the board to preliminarily adopt the existing emission reporting rule in order to satisfy the sunset rule requirements.

Mr. Dan Murray, Environmental Health and Safety Manager for Utilimaster Corporation, stated that the existing rule should be readopted. He stated that requesting the information and the detail that is going to be required for stacks and processes is going to be an overwhelming burden on companies like Utilimaster. He stated that the emission report takes about 60 hours to complete and that the proposed rule will be very costly for smaller businesses.

Mr. Alphonse McMahon, representing the General Electric Company, supported the comments made by Mr. Bernie Paul. He asked the board to preliminarily adopt the existing rule.

Mr. Kurt Anderson, Monaco Coach Corporation, asked the board to readopt the existing rule and to go back into the task force and to work on building a better rule.

Mr. Blake Jeffery, Indiana Cast Metals Association, endorsed the comments made by Mr. Bernie Paul and asked the board to readopt the existing rule.

Mr. Stan Pinegar, Indiana Petroleum Council representing the BP Amoco and the Whiting refinery addressed the board. He endorsed the comments made by Mr. Bernie Paul to readopt the existing rule.

Mr. Bob Byke representing Milestone Contractors, asked the board not to preliminarily adopt the rule because of the fast time frame.

Ms. Ann McIver, Citizens Thermal Energy, asked that the agency be directed to develop a targeted list of hazardous air pollutants by source category that should be reported. She questioned the validity of inventory data based on poorly rated available emissions factors. Ms. McIver expressed concerns regarding the need to have nonstandard emission factors approved for use by EPA, as currently required in the draft rule.

Mr. Jim Hauck, Barnes and Thornburg, endorsed the comments made by Mr. Bernie Paul and Mr. Stan Pinegar to readopt the existing rule.

Mr. Vince Griffin, State Chamber, recommended that the current rule be readopted to satisfy the sunset provision and discussions continue with all of the elements and stakeholders to create a more reasonable rule.

Mr. Tom Neltner, Improving Kids' Environment, encouraged the board to adopt IDEM's draft rule and then continue to push IDEM to work to refine the rule as it goes through the regulatory process.

Mr. Steve Loeschner, concerned citizen, disagreed with Mr. Bernie Paul's comments and whole-heartedly agreed with Mr. Neltner's comments. He asked the board to adopt the rule

as amended and proposed by IDEM. He requested that the rule be amended to add in all of the definition of classes of compounds that are in the Federal Clean Air Act.

Mr. Walker asked for board discussion. The following concerns were brought forth: the rule development process; demonstration of the need for additional data and its use; the cost of complying with the rule; and the implications of the sunset legislation on the emission reporting rulemaking.

Mr. Benshoof made a motion to preliminarily readopt the existing emission reporting rule without the proposed amendments. The motion was not seconded and died.

Mr. Anderson moved to preliminarily adopt amendments to rule 326 IAC 2-6 as presented to the board. Mr. Stevens seconded. The motion carried 6-3.

8. Chairman Walker introduced Exhibit 2, the draft rule, new rule 326 IAC 6-4.5 and repeal of rule 326 IAC 6-4, fugitive dust, into the record of the hearing.

**PUBLIC HEARING FOR
PRELIMINARY
ADOPTION OF NEW
RULE 326 IAC 6-4.5 and
REPEAL OF 326 IAC 6-**

Ms. McCabe stated that the fugitive dust rule is subject to the sunset legislation. The purpose of the fugitive dust rule is to prevent significant amounts of wind-blown dust from getting off people's property at the ground level, where people will be exposed to it at neighboring residences and businesses. She stated that it is particularly a concern for short-term health impacts. Particles that come across as dust can have a serious impact on people's health, especially people who have a respiratory problem. The main elements of the rule that the department proposed for preliminary adoption included a fugitive dust control plan, a visible emissions test, an upwind/downwind test, provisions to address secondary deposition, clarification of certain terms, as well as a provision relative to demolition of buildings and construction-related activities.

Mr. Blake Jeffery, Indiana Cast Metal Association, expressed the following concerns: there are similarities between the fugitive dust rule and the emissions reporting rule in that the changes that are being proposed are not required by federal law; the fugitive dust rule is not an urgent public health issue, but it addresses a public nuisance; the visual violation standard has never been clarified, it is zero tolerance. The draft rule expands the current language without clarifying the old language. The draft rule is substantially beyond the existing rule. Mr. Jeffery requested that the board, as an alternative to preliminary adoption of the draft rule, preliminarily adopt the existing rule and order the agency to pursue a work group process on the rule.

Ms. Anne Heighway, Eli Lilly, commented that the draft rule goes beyond IDEM's authority to address isolated problems. The draft rule needs more appropriate mechanisms for triggering the detailed control plan requirements in the proposed rule. Stack emissions should not be regulated as fugitive emissions. Double regulation should be eliminated from the rule. The proposed rule establishes fugitive violations from secondary deposition analysis and creates a potential liability for every source where particulates become air borne, regardless of whether those particulates were otherwise legally emitted or not. Additional discussion is necessary to work out specific issues. Ms. Heighway requested that IDEM withdraw the proposed revisions to the fugitive dust rule and preliminarily readopt the existing rule language.

Mr. Alphonse McMahon, representing General Electric Company, supported comments made by Mr. Blake Jeffery and Ms. Heighway. He expressed concerns about the secondary deposition portion of the rule by stating that the rule contained no standard by which to determine if a violation exists. Mr. McMahon requested that the board preliminarily adopt the existing rule as it exists today, without any amendments.

Mr. Jim Hauck, Barnes and Thornburg, commented on final adopting the existing rule and suggested a second rulemaking process to address any changes that the agency needs.

Mr. Vincent Griffin, State Chambers, recommended that the board preliminarily adopt the current rule.

Mr. Steve Loeschner, concerned citizen, urged the board to adopt the proposed draft rule, 326 IAC 6-4.5.

Mr. Benshoof moved to preliminarily adopt existing rule, 326 IAC 6-4, and not the department proposed rule 326 IAC 6-4.5. Mr. Harmon seconded the motion.

Board discussion that followed indicated the following concerns: need for a *de minimis* factor or a violation level for the test for secondary deposition and lack of a clear standard for secondary deposition; clarification on procedural matters regarding the motion to preliminarily adopt the existing rule without the amendments and whether or not there would be a logical outgrowth issue if the board preliminarily adopted the draft rule that IDEM is proposing and then decided to final adopt the existing fugitive dust rule.

Chairman Walker asked for a vote on the motion as it was read. There were four ayes and four nays.

Mr. Anderson moved for preliminary adoption of the rule as proposed in the board packet. Mr. Cundiff seconded. There were four ayes and four nays.

Mr. Benshoof moved to preliminarily adopt existing rule, 326 IAC 6-4 and not the new rule 326 IAC 6-4.5. Mr. Harmon seconded. The motion carried 5-2. Mr. Anderson and Mr. Stevens opposed the motion.

9. The next meeting was tentatively scheduled for Tuesday, May 22, 2001, at 1:00 p.m., in the Government Center South, Conference Room C, Indianapolis, Indiana. **NEXT MEETING**

10. Chairman Walker adjourned the meeting at 5:38 p.m. **ADJOURNMENT**

John Walker, Chairman

These minutes were taken from the April 12, 2001 transcript, and were written on June 2, 2001 by Karol T. Chuma, Office of Air Quality.